

## REMARKS

Entry of this Amendment and reconsideration are respectively requested in view of the remarks made herein.

Claims 1-24 are pending. Claims 3, 10, 19 and 20 have been withdrawn from consideration. Claims 1, 2, 4-9, 11-18 and 21-24 stand rejected.

Claims 1-2, 4-9, 11-18 and 21-24 stand rejected under 35 USC 103(a) as being unpatentable over Herz (USP no. 5,758,257) in view of Mowry (USPPA 2001/00496625).

Applicant respectfully disagrees with and explicitly traverses the reason for rejecting the claims.

Herz discloses a system and method for scheduling the receipt of desired movies and other forms of data from a network of such data to which simultaneously distributes many sources of such data to many customers. Customer profiles are developed for the recipient describing how important certain characteristics of the broadcast video program, movie or other data are to each customer. From these profiles and agreement matrix is calculated by comparing the recipient's profiles to the actual profiles of the characteristics of the available video programs, movies, or other data. Virtual channels are generated from the agreement matrix to produce a series of video or data programming which will provide the greatest satisfaction to each customer. (see Abstract).

Hertz more specifically discloses that "[b]ased on the comparison results, one or more customized programming channels are created for transmission and from those channels, each customer's set top multimedia terminal may further determine virtual channels containing a collection of only those video programs having content profiles which best match the customer's profile and hence are most desire to the customer during the relevant time frame." (see col. 4, lines 51-58). Presentation of the most desired content as virtual channels is further disclosed in col. 40, lines 57-63, which state "[t]he agreement matrix suggest programming for virtual channels and/or controls the tuners of the set top multimedia terminals to select the most desired programming of the customers in accordance with the customer's profiles."

In summary, Hertz teaches a system where recommendations of desired programming are provided to a set top box as virtual channels. Hertz, however, is silent

with regard to presenting the recommendations in an audio form; let alone using a celebrity to verbally present the recommendations.

Mowry discloses a system and method which includes a television programming, an electronic commerce catalog, an interactive Internet site and an electronic communications network linking the television program, the electronic commerce catalog and the interactive Internet site. The system and method is designed such that the users of the Internet site affect the content within the live television program and the live television program is produced to function in tandem with the Internet site such that the content of the program determines the content of the electronic commerce catalog. (see Abstract).

Mowry further discloses that live celebrity endorsements may be provided in conjunction with data responses (see paragraph 100). Or that "spontaneous on-air video appearance or 'chime-in' by the on-line player ... in the form of LIVE SHOW host, celebrity appearance, product endorsements ..." (see paragraph 120).

In summary, Mowry teaches a system wherein live television shows, which may include celerity appearances, receive view inputs via the Internet and the personalities of the live television show may respond to the view responses.

A claimed invention is *prima facie* obvious when three basic criteria are met. First, there must be some suggestion or motivation, either in the reference themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine the teachings therein. Second, there must be a reasonable expectation of success. And, third, the prior art reference or combined references must teach or suggest all the claim limitations.

In this case, Herz teaches a system that provides recommendations of desired television programs and presents the recommendations as virtual channels. Mowry teaches a system wherein a celebrity may be used to provide endorsement of products and/or present results of consumer responses to the endorsement or product placement provided over the Internet.

Contrary to the statements made in the Office Action, the combination of Herz and Mowry fails to render obvious the subject matter recited in claim 1, for example, as the combination of Herz and Mowry fails to disclose all the elements recited.

More specifically, neither Herz nor Mowry, individually or in combination, teach or suggest "reporting the recommendation to the user through the celebrity," as is recited in the claims. Hence, even if the teachings of Herz and Mowry, were combined, the combined device would not include all the elements claimed, as the combine device would fail to report the recommendations to the user through the celebrity upon whom the recommendations were based.

Furthermore, The Office Action has referred to Mowry, but Mowry discloses celebrities are used in the presentation of live television programs. The Office Action has failed to show where in the Herz reference it would be more desirable to have a celebrity verbally present the information regarding the desired television programs. Also, as many different desired programs may be found that match the profile, there is no suggestion as to which celebrity would be used to present the desired programs. Hence, even if the teachings of the references were combined, there exists a lack of teaching to correct the deficiency in the logic shown to exist in the combination of the cited references.

For at least this reason, applicant submits that the rejection of claim 1 has been overcome and the rejection can no longer be sustained. Applicant respectfully requests withdrawal of the rejection and allowance of the claims.

With regard to the remaining independent claims, these claims recite subject matter similar to that recited in claim 1 and were rejected citing the same references used in rejecting claim 1. Thus, applicant's remarks made in response to the rejection of claim 1 are also applicable in response to the rejection of the remaining independent claims. Applicant submits that in view of the remarks made with regard to the rejection of claim 1, which are reasserted, as if in full, in response to the rejection of the remaining independent claims, the reason for the rejection of these claims has been overcome and the rejection can no longer be sustained. Applicant respectfully requests withdrawal of the rejection and allowance of the claims.

With regard to the remaining dependent claims, these claims ultimately depend from the independent claims, which have been shown not to be obvious, and, hence, allowable, over the cited references. Accordingly, the remaining dependent claims are also allowable by virtue of their dependence from an allowable base claim.

For all the foregoing reasons, it is respectfully submitted that all the present claims are patentable in view of the cited references. A Notice of Allowance is respectfully requested.

Respectfully submitted,

Yan Glickberg  
Registration No. 51,742

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By:   
Steve Cha  
Attorney for Applicant  
Registration No. 44,069

**Mail all correspondence to:**

Yan Glickberg, Registration No. 51,742  
US PHILIPS CORPORATION  
P.O. Box 3001  
Briarcliff Manor, NY 10510-8001  
Phone: (914) 333-9608  
Fax: (914) 332-0615